

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA**

Josh Thompson,

Plaintiff,

v.

Discover Products Inc., successor by merger to
DB Servicing Corporation.,

Defendant.

: Civil Action No.: 5:15-cv-00012-FL

: **FIRST-AMENDED COMPLAINT**
: **JURY TRIAL DEMANDED**

For this First-Amended Complaint, the Plaintiff, Josh Thompson, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of repeated violations of the Telephone Consumer Protection Act, 15 U.S.C. § 1692, et seq. (“TCPA”).
2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.
3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that the Plaintiff resides in this District and a substantial portion of the acts giving rise to this action occurred in this District.

PARTIES

4. The Plaintiff, Josh Thompson (“Plaintiff”), is an adult individual residing in Raleigh, North Carolina, and is a “person” as the term is defined by 47 U.S.C. § 153(39).
5. Defendant Discover Products Inc., successor by merger to DB Servicing Corporation. (“Discover”), is a Delaware business entity with an address of 1209 Orange Street, Wilmington, Delaware 19801, and is a “person” as the term is defined by 47 U.S.C. § 153(39).

FACTS

6. Beginning in August 2014, Discover began contacting Plaintiff in an attempt to collect a consumer purchase (the “Debt”) from a person other than Plaintiff (the “Debtor”).

7. Discover called Plaintiff’s cellular telephone, number [919-XXX-3268], by using an artificial prerecorded voice.

8. Plaintiff never provided his cellular telephone number to Discover and never provided his consent to be called by Discover.

9. When Plaintiff answered the calls from Discover he was met with a recording instructing him to hold for the next available representative.

10. During a live conversation with Discover, Plaintiff informed the agent that it was calling the wrong number, and that the Debtor was unknown to him.

11. Furthermore, Plaintiff advised the agent to cease all calls to his cellular telephone.

12. Despite the foregoing, Discover continued calling Plaintiff using an artificial voice in an attempt to reach the Debtor.

13. Plaintiff received up to three (3) calls per week for multiple weeks from Discover, causing him a great deal of stress and frustration.

COUNT I **VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –**

47 U.S.C. § 227, et seq.

1. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

2. Plaintiff never provided his cellular telephone number to Discovery or the Creditor and never provided his consent to be contacted on his cellular telephone.

3. Without prior consent Discover contacted Plaintiff by means of automatic telephone calls or prerecorded messages at a cellular telephone in violation of 47 U.S.C. § 227(b)(1)(A)(iii).

4. Defendants continued to place automated calls to Plaintiff's cellular telephone after being advised it had the wrong number and knowing there was no consent to continue the calls. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

5. The telephone number called by Discovery was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

6. The calls from Discover to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

7. Discover's telephone system has the capacity to store numbers in a random and sequential manner.

8. As a result of each call made in negligent violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

9. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against Defendant:

1. Statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B) & (C);

2. Punitive damages; and
3. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: January 16, 2015

Respectfully submitted,

By: /s/ Ruth M. Allen

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